

MINUTES
ZONING BOARD OF APPEALS
JANUARY 5, 2011

MEMBERS PRESENT: WILLIAM MOWERSON
 JOAN SALOMON
 NANETTE ALBANESE
 PATRICIA CASTELLI
 DANIEL SULLIVAN

ABSENT: NONE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
 Ann Marie Ambrose, Official Stenographer
 Deborah Arbolino, Administrative Aide

This meeting was called to order at 7: 00 P.M. by Mr. Mowerson, Chairman.

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

155 CORPORATE DRIVE 73.19 / 1 / 1; LO zone	POSTPONED	ZBA#10-92
---	-----------	-----------

NEW ITEMS:

ZUGIBE & HOLT 70.08 / 1 / 5; R-40 zone	SIDE YARD VARIANCE APPROVED	ZBA#11-01
---	--------------------------------	-----------

MARKS/GARVEY 75.13 / 1/ 2; R-40 zone	CONTINUED	ZBA#11-02
---	-----------	-----------

ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: **RESOLVED**, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Mundt Remediation Plan- Critical Environmental Area, 252 South Boulevard, Upper Grandview, N.Y., 66.17 / 1 / 27; R-22 zone; and **FURTHER RESOLVED**, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:30 P.M.

Dated: January 5, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DECISION

SIDE YARD VARIANCE APPROVED

To: Patricia Zugibe & Jack Holt

ZBA # 11-01

1 North Tweed Boulevard
Upper Grandview, New York

Date: January 5, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-01: Application of Patricia Zugibe and Jack Holt for a variance from Chapter 43 (Zoning), Section 3.12, R-40 District, Group E, Column 9 (Side Yard: 30' required, 11' proposed) for the installation of an in-ground pool at an existing single-family residence. The premises are located at 1 North Tweed Boulevard, Grandview, New York, and are identified on the Orangetown Tax Map as Section 70.08, Block 1, Lot 5; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 5, 2011 at which time the Board made the determination hereinafter set forth.

John Atzl appeared and testified.

The following documents were presented:

1. Site Plan dated October 5, 2010 signed and sealed by John R. Atzl L.S. & Raymond Ahmadi, P.E.
2. A letter dated November 10, 2010 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
3. Planning Board Decision #10-54 dated November 10, 2010.
4. A letter dated December 2, 2010 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
5. A letter dated December 23, 2010 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

Mr. Mowerson made a motion to open the Public Hearing which motion was seconded by Ms. Albanese and carried unanimously.

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Ms.

Albanese, aye; and Mr. Mowerson, aye.

Patricia Zugibe testified that she is an Attorney for the County; that she is before the Board to install an in-ground pool that requires a side yard variance; that this area of the yard was chosen for the pool because of the topography of the property; that this area of the yard is less sloped than the rest of the property; that she has met with the Palisades Interstate Park and is addressing their concern regarding the large locust tree that is about 15' from the proposed pool and 6' from the proposed patio; that they are discussing ways to protect its roots during construction of the pool.

John Atzl, Land Surveyor, testified that if the pool were moved further north it would require the installation of a retaining wall and cause a lot more land disturbance; that the area that the pool is proposed to be installed is a natural platform; that to the south the land rises with parkland above the property; that to the north the property drops off sharply; that in this location the proposed pool can be integrated into the existing rock; and that the pool location is south on the property but east of the house.

Jack Holt testified that the property to the west and south are owned by the Palisades Park Commission; that the previous owner of the property had lifetime access to the parkland; that she has passed away and the access is overgrown.

Public Comment:

Dennis Lynch, Attorney, spoke in support of the application.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Mowerson made a motion to close the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The topography of the property determined that this is the best location for the pool, requiring the least amount of land disturbance.
2. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The topography of the property determined that this is the best location for the pool, requiring the least amount of land disturbance.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested side yard variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The topography of the property determined that this is the best location for the pool, requiring the least amount of land disturbance.

5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard variance is APPROVED with the Specific Conditions listed in the letter dated December 23, 2010 from the County of Rockland Department of Highways and the letter dated December 2, 2010 from the County of Rockland Department of Planning; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested side yard variance was presented and moved by Ms. Albanese, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: January 5, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN
Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -N.A.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

